

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:10-cr-00271-MOC-DCK

UNITED STATES OF AMERICA,

Vs.

CORY GETON JOHNSON,

Defendant.

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ORDER

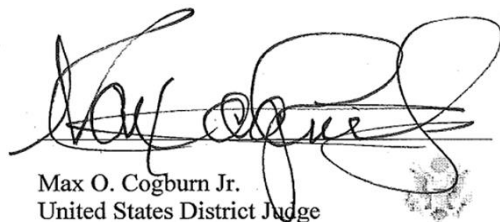
THIS MATTER is before the court on defendant's letter (#34) dated April 16, 2013, which the court deems to be a Motion for Return of Seized Property filed in accordance with Rule 41(g), Federal Rules of Criminal Procedure. Review of the docket reveals that defendant did not take a direct appeal of this court's Judgment, but has appealed this court's Order (#32) denying his Motion to Vacate, which is presently pending before the Court of Appeals for the Fourth Circuit. Review of Rule 4(b), Federal Rules of Appellate Procedure, does not indicate whether the pendency of an appeal of an Order denying petitioner's collateral challenge divests this court of jurisdiction to entertain a Rule 41(g) motion and the court can find no reported cases specifically addressing this issue. What is clear, however, is that the return of seized property was not raised in the Motion to Vacate.

The court will, therefore, require the government to file a response to defendant's contention that its agents have not returned certain seized property. In that response, the government may also address whether this court has jurisdiction to entertain such motion at this time in light of defendant's pending collateral appeal.

ORDER

IT IS, THEREFORE, ORDERED that the government file its Response to defendant's letter (#34) dated April 16, 2013, which the court deems to be a Motion for Return of Seized Property, filed in accordance with Rule 41(g), Federal Rules of Criminal Procedure, within 30 days of receipt of this Order.

Signed: May 3, 2013



Max O. Cogburn Jr.
United States District Judge